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EXAMINER

FULLER, ERIC B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1762

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,217

Applicant(s)

AMON, THOMAS R.

Examiner

Eric B Fuller

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Observations/Interpretations

It is noted that for the most part the claims do not require a specific order to the claimed steps (except claims such as claim 10) nor time constraints. In particular, claim 1 is open to step c being performed prior to step b. Claim 1 is also open to the asphalt mat being set, opened to traffic, then later sealed. Additionally, "sealer" is a vague term and includes compositions used as a protective layer as well as compositions used for sealing cracks and joints.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 3, 5-8, 11, 13, 16, 19-23, 25, 27, 29-32, and 35 are rejected under 35 U.S.C. 102(a) as being anticipated by the applicant's admitted prior art.

On page 2, lines 18-20, the applicant admits that conventional liquid sealer commonly used in asphalt paving industries include a coal tar emulsion, an asphalt emulsion, plastic materials, and genite. As the claims are open to applying the sealant

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at any time, and laying asphalt is inherently performed uncompacted, this teaching of conventional sealants reads on the applicant's claims.

Claims 1-5, 7, 9-19, 21, 23-29, 31, and 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by McGovern (US 4,661,378).

McGovern teaches a method of sealing an asphalt mat (column 1, lines 40-45) with a sealant that comprises coal tar emulsion and plastics (column 3, lines 10-20; column 4, lines 23-36). The asphalt is inherently uncompacted as it is being laid. The liquid sealant may be sprayed and/or roller coated (column 4, lines 37-46). After the sealant is applied, the asphalt is compacted with a roller (column 6, lines 7-27). The sealant acts to seal pores in the asphalt layer (column 2, lines 25-32). Aggregate may be applied (column 6, lines 15-20). As to claims 10, 13, and 34, the asphalt being set would be interpreted by one of ordinary skill in the art as at least being partially compacted.

Claims 1, 3, 4, 6, 7, 9, 11-14, 16-18, 20, 21, 23-25, 27, 28, 30, 31, 33, 35, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Burdge (US 1,390,194).

Burdge teaches a method of laying an asphalt mat (page 1, line 10). Before the mat is compacted, a sealant that comprises asphalt emulsion and plastics is spread on to the substrate (page 1, lines 82-112, page 2, lines 1-42). After the sealant is applied, the asphalt is compacted with a roller (page 2, lines 24-26). The sealant acts to seal pores in the asphalt layer (page 2, lines 50-56). Aggregate may be applied (page 2,

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lines 43-49). As to claim 13, page 2, lines 24-32, teach that the asphalt layer is partially compacted before it is completely compacted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 8, 20, 22, 30, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern (US 4,661,378), as applied to claim 1 above, and further in view of the applicant's admitted prior art.

McGovern teaches the limitations of claim 1, but is silent to including asphalt emulsion and/or genite in the sealant composition. However, the applicant admits on page 2 of the specification that it is known that in addition to coal tar emulsions and plastic materials, asphalt emulsions and genite are conventionally known sealants. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to utilize these sealants, either additionally or in substitution, in the process taught by McGovern. By doing so, one would expect at least similar results, as McGovern teaches using conventionally known sealants and the applicant shows other conventionally known sealants.

Claims 2, 15, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burdge (US 1,390,194).

Burdge teaches the limitations above, but is silent to the sealant being applied by spraying. However, it is taught that the sealant is a liquid. To apply the sealant by spraying would have been obvious at the time the invention was made to a person having ordinary skill in the art. By doing so, the sealant is applied in a conventional way.

Claims 5, 8, 19, 22, 29, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burdge (US 1,390,194), as applied to claim 1 above, and further in view of the applicant's admitted prior art.

Burdge teaches the limitations of claim 1, but is silent to including coal tar emulsion and/or genite in the sealant composition. However, the applicant admits on page 2 of the specification that it is known that in addition to asphalt emulsions and plastic materials, coal tar emulsions and genite are conventionally known sealants. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to utilize these sealants, either additionally or in substitution, in the process taught by Burdge. By doing so, one would expect at least similar results, as Burdge teaches using conventionally known sealants and the applicant shows other conventionally known sealants.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In view of the examiner interpretations discussed above the following references may also read on the applicant's claims: Heiman (US 4,392,335), Ogata et al. (US 3,947,395), Ward (US 4,453,980), Blacklidge et al. (US 5,296,264)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric B Fuller whose telephone number is (571) 272-1420. The examiner can normally be reached on Mondays through Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P Beck, can be reached on (571) 272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EBF



MICHAEL BARR
PRIMARY EXAMINER